

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Bernard Belair,

Plaintiff,

v.

MGA Entertainment, Inc. and

Mattel, Inc.,

Defendants.

[PROPOSED] SCHEDULING ORDER

Case No. 09-CIV-8870 (SAS)  
ECF Case

Conference Date: December 18, 2009  
4:30 pm

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) on November 12, 2009 (the "Order"); and

WHEREAS, the Order requires that the parties jointly prepare and sign a proposed scheduling order containing certain information;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order:

(1) The Initial Pretrial Conference is scheduled for December 18, 2009 at 4 p.m. The appearances are as follows:

For plaintiff Bernard Belair:

Gerard A. Haddad  
Jennifer BianRosa  
Joshua P. Jaffe  
Dickstein Shapiro LLP  
1633 Broadway  
New York, NY 10019

For defendant MGA Enterprises, Inc.:

Annette L. Hurst  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669

Lisa T. Simpson  
Aaron G.R. Rubin  
Orrick, Herrington & Sutcliffe LLP  
666 Fifth Avenue  
New York, NY 10103

For defendant Mattel, Inc.:

Michael T. Zeller  
Tamar Buchakjian  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
South Figueroa Street, 10th Floor  
Los Angeles, CA 90017

Peter Martino  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
51 Madison Ave., 22nd Floor  
New York, NY 10010

(2) Statement of the issues:

The principal issues are (1) whether defendants MGA Entertainment, Inc. (“MGA”) and/or Mattel, Inc. (“Mattel”) have infringed one or more of Mr. Belair’s registered copyrights, (2) whether Mattel was unjustly enriched in its litigation against MGA to the detriment of Bernard Belair, and (3) the appropriate measure of damages and/or equitable relief, if any.

Bernard Belair has brought this suit against Mattel and MGA for copyright infringement, and against Mattel for unjust enrichment. The amended complaint asserts that Mr. Belair is the owner of copyrights in certain images which have been used in advertisements for Steve Madden shoes (“the Belair images”). Mr. Belair alleges that MGA copied the Belair images to create a

line of dolls known as Bratz dolls, and that the original sketches for the Bratz dolls were copied from the Belair images by the Bratz doll designer while he was still employed by Mattel.

Mr. Belair also alleges that Mattel was unjustly enriched in a litigation brought in the Central District of California by Mattel against MGA when, in 2008, that Court awarded Mattel damages and an injunction for MGA's copying of sketches and sculpts allegedly owned by Mattel and used to create MGA's Bratz line of dolls. Mr. Belair alleges that those sketches and sculpts created at Mattel are unauthorized copies, or unauthorized derivative works, of the Belair images.

MGA has asserted a number of defenses, including statute of limitations, laches, waiver, estoppel and acquiescence, as the Bratz dolls have been in wide circulation and marketed throughout the United States for nine years. In addition, MGA asserts that the Bratz dolls neither copy the idea of Belair's images nor its expression in that they do not copy any valid copyright-protected element of the Belair images. MGA further assert that any similarities, if any at all, result from non-protectable elements as reflected in the popular culture. Mattel likewise has asserted a number of defenses, including that Mattel has not released to market any Bratz dolls. Mattel further disputes that any unjust enrichment claim could properly be asserted against Mattel in this action. Both MGA and Mattel question Belair's ownership of the advertisements at issue.

(3) Proposed schedule:

Plaintiff's Position:

Defendants indicate below their desire to stay this case until the resolution of the action between them pending in the Central District of California, or in the alternative seek a schedule in this case that effectively grants a stay. Belair opposes a stay. If the Court is inclined to consider defendants request for a stay, Belair requests that the issue be fully briefed on an expedited basis to avoid further delay.

2004 filed  
for reed  
summer '08

Defendants' Position:

As reflected in the Amended Complaint, Belair asserts that testimony and events in the underlying action between Mattel and MGA in the Central District of California are material to this action. That litigation remains ongoing, both because claims remain to be tried in the District Court and because certain orders relating to the first phase trial are the subject of a pending interlocutory appeal before the Ninth Circuit. District Judge David O. Carter has put in place a very aggressive schedule for the District Court proceedings (requiring for example over 50 depositions between now and the end of February, with a trial date that is tentatively scheduled for April, subject to any further actions by the Ninth Circuit).

Due to the active litigation underway and the current schedule, MGA and Mattel believe that a stay of this action until the conclusion of the trial in California would be appropriate. Such a stay will also allow time for the Ninth Circuit to issue its ruling on MGA's appeal and will provide guidance on several issues, including the proper parties to this suit. The vast resources that MGA and Mattel are required to devote to the California action over the next several

months, which include many of the same company personnel and witnesses as would be needed here (and the same counsel), would make proceeding simultaneously in this case enormously difficult and potentially wasteful. And, in the case of MGA, simultaneous proceedings would present a true financial hardship.

While MGA and Mattel believe that a short stay is the most appropriate way to proceed in this matter, MGA and Mattel propose in the alternative the following schedule, which takes into account the expected April trial date and seeks to avoid unnecessary conflict with the Central District of California proceedings, in the event that the Court does not feel a stay is appropriate.

Event	Belair's proposed dates	MGA's and Mattel's proposed dates
26(a) disclosures	Dec. 14, 2009	Dec. 14, 2009
Amend pleadings by		Feb. 5, 2010
Add parties by		Feb. 5, 2010
Written discovery complete by	<del>May 28, 2010</del> <i>end of June 2010</i>	<del>September 17, 2010</del>
Fact discovery closes	<del>May 28, 2010</del>	Sept. 17, 2010
Expert reports (by party with burden of proof) by	June 25, 2010	Oct. 15, 2010
Rebuttal expert reports by	July 23, 2010	Nov. 12, 2010
Expert depositions by	August 20, 2010	Dec. 20, 2010
Discovery closes	<del>August 20, 2010</del>	Dec. 20, 2010
Summary judgment motions	Sept. 10, 2010	Jan. 21, 2011
Oppositions to summary judgment motions	Oct. 8, 2010	Feb. 18, 2011

Reply to summary judgment motions	Oct. 22, 2010	March 4, 2011
Plaintiff supplies pretrial order to defendants	15 days after disposition of dispositive motions	15 days after disposition of dispositive motions
Pretrial order per the Court's instructions submitted to the Court with trial briefs, proposed voir dire questions and proposed jury instructions	45 days after disposition of dispositive motions	45 days after disposition of dispositive motions

In addition to the schedule above, Belair requests that the Court waive the requirements of Local Rule 33.3 and permit the parties to serve contention interrogatories at any time during discovery. Mattel requests that the Court waive the requirements of Local Rule 33.3 and permit the parties to serve contention interrogatories at any time unless and except to the extent that a stay of the case or discovery is imposed. MGA requests that the Court waive the requirements of Local Rule 33.3 and permit the parties to serve contention interrogatories either upon the lifting of any stay or, if no stay is granted, then on or after June 1, 2010.

Schedule of depositions. The parties expect that there will be depositions of at least the following entities and individuals: Bernard Belair, Carter Bryant, Margaret Leahy, Paula Garcia, Isaac Larian, MGA (under Rule 30(b)(6)), Mattel (under Rule 30(b)(6)), Steve Madden LTD (under Rule 30(b)(6)), and anticipate designating additional deponents as discovery proceeds.

*June through August, 2010.*

Date for final pre-trial conference pursuant to Rule 16(d), Fed. R. Civ. P.:

*Sept. 30, 2010 at 4:30*

- (4) Limitations to be placed on discovery: The parties are negotiating a proposed stipulated protective order to maintain the confidentiality of certain documents and things produced during discovery.
- (5) Discovery issues on which counsel are unable to agree: Other than the discovery schedule (including any stay) and their respective positions on Local Rule 33.3 stated above, the parties have no disagreements at this time.
- (6) Anticipated fields of expert testimony: (a) substantial similarity, (b) the fashion doll industry and (c) damages.
- (7) Anticipated length of trial and whether to Court or jury: 5-7 day trial to a jury.
- (8) This Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires.

Dated: December 18, 2009

DICKSTEIN SHAPIRO, LLP

By: /s/ Gerard A. Haddad  
Gerard A. Haddad  
Jennifer BianRosa  
Joshua P. Jaffe  
Dickstein Shapiro LLP  
1633 Broadway  
New York, New York 10019  
Telephone: (212) 277-6500  
Facsimile: (212) 277-6501

Attorneys for Plaintiff Bernard Belair

ORRICK, HERRINGTON & SUTCLIFFE  
LLP

By: /s/ Lisa T. Simpson

Lisa T. Simpson  
Aaron G.R. Rubin  
666 Fifth Avenue  
New York, NY 10103-0001  
Telephone: (212) 506-5000  
Facsimile: (212) 506-5151

Annette L. Hurst  
The Orrick Building  
405 Howard Street

San Francisco, CA 94105-2669  
Telephone: (415)-773-5700  
Facsimile: (415)-773-5759

Attorneys for Defendant MGA Entertainment,  
Inc.

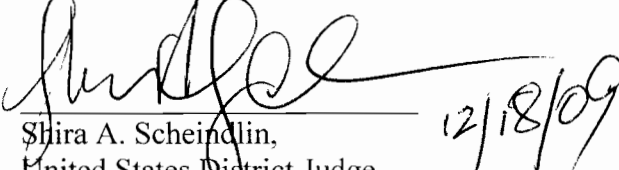
QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP

By: /s/Michael T. Zeller  
Michael T. Zeller  
Tamar Buchakjian  
South Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

Peter Martino  
51 Madison Ave., 22nd Floor  
New York, NY 10010  
Telephone: (212) 849-7000

Attorneys for Defendant Mattel, Inc.

SO ORDERED:

  
Shira A. Scheindlin,  
United States District Judge. 12/18/09

ATTESTATION OF SIGNATURES

I, Gerard A. Haddad, hereby attest that concurrence in this filing has been obtained from  
all of the signatories.

Dated: December 18, 2009

\_\_\_\_\_  
Gerard A. Haddad